

California Regional Water Quality Control Board
North Coast Region

COMPLAINT ORDER NO. R1-2001-0204

FOR

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

BRIAN CRAIG

BLOCKSBURG, CA

FOR

VIOLATIONS OF SECTION 13267(B) OF THE CALIFORNIA WATER CODE

Humboldt County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), hereby gives notice that:

1. Brian Craig (hereinafter the Discharger) violated Section 13267(b) of the California Water Code (CWC), for which the Regional Water Board may impose civil liability under CWC Section 13268(a).
2. Unless waived, a hearing on this matter will be held before the Regional Water Board within 60 days following the issuance of this Complaint. The Discharger or the Discharger's representative will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability before the Regional Water Board. The hearing is scheduled for the Regional Water Board meeting to be held on January 24, 2002, in Santa Rosa, California. An agenda showing the time set for the hearing will be mailed to the Discharger not less than 10 days before the hearing.
3. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.
4. The following facts are the basis for the alleged violations in this matter:
 - a. The Discharger owns property identified by the Humboldt County Assessor's Office as Parcel Numbers 217-225-006 and 217-225-007 (hereinafter Site) located in the Eel River Hydrologic Unit (111.00).
 - b. On May 19, 2000, the Humboldt County Division of Environmental Health (HCDEH) responded to an Office of Emergency Services (OES) hazardous materials spill report. The OES report was filed following the discovery of diesel contamination and other potential contaminants at the Site by the Humboldt County Sheriff's Office and the Drug Enforcement Agency during an enforcement action on a marijuana growing operation. Soil samples collected at the Site by HCDEH revealed the detection of Total Petroleum Hydrocarbons as grease and oil at 14,000 ug/g (ppm) and TPH Diesel at 30,000 ppm. A contaminant discharge report was submitted by the HCDEH to the Regional Water Board on May 30, 2000.

- c. Pursuant to CWC Section 13267(b), the Executive Officer of the Regional Water Board issued an order to the Discharger on August 30, 2000, requiring submittal of a workplan for investigation and cleanup by October 5, 2000, and a report describing implementation of the workplan by January 5, 2001. A workplan was submitted on November 27, 2000, and approved for implementation on December 14, 2000. A report describing the implementation of the workplan was not received by January 5, 2001. On February 2, 2001, Regional Water Board staff notified the Discharger of the delinquent report and requested submittal of the report by February 20, 2001. On April 17, 2001, the Executive Officer of the Regional Water Board issued an order to the Discharger pursuant to CWC Section 13267 requiring submittal of a report describing implementation of the workplan by April 30, 2001. The Discharger failed to submit the required report, thereby violating CWC Section 13267(b).
5. The Regional Water Board adopted the Water Quality Control Plan for the North Coast Region (Basin Plan) on December 9, 1993. The State Water Resources Control Board, on March 21, 1994, and the Office of Administrative Law, on August 18, 1994, approved the Basin Plan. The Basin Plan was amended on March 24, 1994, June 22, 1995, and May 23, 1996.

Pursuant to the Basin Plan, including State Water Board Resolution 88-63, the existing and potential beneficial uses of surface water and groundwater in the Eel River Hydrologic Unit that are or may be affected by the petroleum contamination or other potential contaminants are:

- a. municipal and domestic supply
 - b. agricultural supply
 - c. industrial service supply
 - d. groundwater recharge
 - e. water contact recreation
 - f. non-contact water recreation
 - g. commercial and sport fishing
 - h. cold freshwater habitat
 - i. wildlife habitat
 - j. rare, threatened, or endangered species
 - k. migration of aquatic organisms
 - l. spawning, reproduction, and/or early development
6. CWC Section 13268(a) provides for the imposition of civil liabilities against dischargers who fail to provide technical reports as required by subdivision (b) of CWC Section 13267. CWC Section 13268 provides that the Regional Water Board may assess civil penalties in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs. As set forth above, the Discharger has failed to submit the report required under CWC Section 13267(b). As of November 30, 2001, the Discharger has been in violation of Section 13267(b) of the CWC for 214 days. This yields a maximum civil liability of \$214,000.00.

7. In determining the amount of the liability, the following factors were considered:

a. The Nature, Circumstances, Extent, and Gravity of the Violations:

Failure to submit reports of compliance with the terms of CWC Section 13267(b) is a serious violation. Lack of information prevents the Regional Water Board from adequately reviewing the Discharger's operations to ensure protection of water quality.

b. Economic Savings:

Significant economic benefits were not realized by the Discharger, as the costs associated with providing the required report are simply delayed, not completely avoided, by noncompliance to date. The Discharger is still required to provide the report.

c. Degree of Culpability:

The Discharger failed to comply with an April 17, 2001 CWC Section 13267(b) Order to submit a site investigation report, which itself was only issued after encountering compliance problems outlined above, with numerous additional efforts by Regional Water Board staff to encourage compliance and avoid both the necessity of the April 17, 2001 Order and the penalties imposed herein for the failure to comply with that most recent Order. Due to the flagrant nature of the violation an administrative civil liability of \$30,000.00 is proposed.

d. Prior History of Violations:

The Discharger failed to comply with Regional Water Board requests dated August 30, 2000, February 2, 2001, and April 17, 2001, to conduct an investigation of the contamination at the Site and to perform interim remedial action.

e. Susceptibility to Cleanup and Voluntary Cleanup Efforts Undertaken:

Cleanups of the materials similar to those discharged at this Site have occurred at numerous sites throughout the Region. The discharge of contaminants at this Site is a continuing threat to the environment, and cleanup of the contamination is feasible. No information has been provided to document any voluntary cleanup conducted.

f. Ability to Pay and Ability to Continue in Business:

The Regional Water Board staff has no information regarding the Discharger's ability to pay. The Discharger should be prepared to address his ability to pay the maximum civil liability or any lesser amount, and be prepared to offer evidence on the matter if he puts this element at issue.

8. The issuance of a Complaint for Administrative Civil Liability is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

9. The Regional Water Board's costs for attempting to achieve compliance with the California Water Code in this matter are approximately \$5,200.00. This cost is calculated as the staff time spent preparing correspondence to the Discharger and preparation of this Complaint for Administrative Civil Liability, including all required review, documentation and notices multiplied by \$65 per staff hour.
10. This settlement will not become effective until after a 30-day public comment period.

The Executive Officer of the Regional Water Board hereby proposes that Brian Craig be assessed an Administrative Civil Liability in the amount of Thirty Thousand Dollars (\$30,000.00). Of that amount, fifteen thousand dollars (\$15,000.00) is due and payable by January 11, 2002. The remaining fifteen thousand dollars (\$15,000.00) is suspended contingent upon submission of an adequate report of workplan implementation by January 4, 2002.

Failure to comply with any of the foregoing shall result in the automatic re-instatement of the suspended penalty of fifteen thousand dollars (\$15,000.00).

11. The Discharger may waive the right to a hearing. If the Discharger wishes to waive the hearing, the Discharger should sign the enclosed waiver and return it with a cashier's check or money order, made payable to the "State Water Resources Control Board", in the amount of \$15,000 by January 11, 2002, to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403. This settlement will not become effective until after a 30-day public comment period. The suspended liability shall be automatically due and payable if the Discharger fails to comply with any of the above-mentioned requirements for suspended liability.
12. Unless waived, a hearing on this matter will be held before the Regional Water Board within 60 days following the issuance of this Complaint. Discharger and/or the Discharger's representative will have an opportunity to address and contest the allegations in the Complaint and the imposition of civil liability before the Regional Water Board. The hearing is scheduled for the Regional Water Board meeting to be held on January 24, 2002. An agenda showing the time set for the hearing will be mailed to you not less than 10 days before the hearing. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions. This settlement will not become effective until after a 30-day public comment period.

Ordered by _____

Susan A. Warner
Executive Officer

November 30, 2001